

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Walsh, Marian (SEN)

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the equitable taxation of corporations.

PETITION OF:

NAME:

Walsh, Marian (SEN)

DISTRICT/ADDRESS:

Suffolk and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S01842 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE EQUITABLE TAXATION OF CORPORATIONS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Subsection (c) of section 38 of chapter 63 of the General Laws, as appearing in
2 the 2000 Official Edition, is hereby amended by striking out the words "
3 other than a defense corporation as described in subsection (k), a manufacturing corporation as
4 described in subsection (l), or a mutual fund service corporation to the extent of its mutual fund
5 sales as described in subsection (m),"

6 SECTION 2. Said section 38 is hereby further amended by striking out subsections (k) and (l).

7 SECTION 3. Said section 38 is hereby further amended by striking out subsection (m) and
8 inserting in place thereof the following subsection:-

9 (m) As used in subsection (f), the following words shall, unless the content otherwise requires,
10 have the following meaning:

11 "Administration services", include, but are not limited to, clerical, fund or shareholder
12 accounting, participant record keeping, transfer agency, bookkeeping, data processing, custodial,
13 internal auditing, legal and tax services performed for a regulated investment company, but only
14 if the provider of such service or services during the taxable year in which such service or
15 services are provided also provides or is affiliated with a person that provides management or
16 distribution services to any regulated investment company.

17 "Distribution services", include, but are not limited to, the services of advertising, servicing,
18 marketing or selling shares of a regulated investment company, but, in the case of advertising,
19 servicing or marketing shares, only where such service is performed by a person who is, or in the
20 case of a close end company, was, either engaged in the services of selling regulated investment
21 company shares or affiliated with a person that is engaged in the service of selling regulated
22 investment company shares. In the case of an open end company, such service of selling shares
23 must be performed pursuant to a contract entered into pursuant to 15 USC section a-15(b), as
24 from time to time amended.

25 "Domicile", presumptively the shareholder's mailing address on the records of the regulated
26 investment company. If, however, the regulated investment company or the mutual fund service
27 corporation has actual knowledge that the shareholder's primary residence or principal place of
28 business is different than the shareholder's mailing address said presumption shall not control. If
29 the shareholder of record is a company which holds the shares of the regulated investment
30 company as depositor for the benefit of a separate account, then the shareholder shall be the
31 contract owners or policyholders of the contracts or policies supported by the separate account,
32 and it shall be presumed that the domicile of said shareholder is the contract owner's or

33 policyholder's mailing address to the extent that the company maintains such mailing addresses
34 in the regular course of business. If the regulated investment company or the mutual fund
35 service corporation has actual knowledge that the shareholder's principal place of business is
36 different than the shareholder's mailing address said presumption shall not control.

37 "Management services", include, but are not necessarily limited to, the rendering of investment
38 advice directly or indirectly to a regulated investment company, making determinations as to
39 when sales and purchases of securities are to be made on behalf of the regulated investment
40 company, or the selling or purchasing of securities constituting assets of a regulated investment
41 company, and related activities, but only where such activity or activities are performed: (i)
42 pursuant to a contract with the regulated investment company entered into pursuant to 15 USC
43 section a-15(a), as from time to time amended; (ii) for a person that has entered into such
44 contract with the regulated investment company; or (iii) for a person that is affiliated with a
45 person that has entered into such contract with a regulated investment company.

46 "Mutual fund sales", taxable net income derived within the taxable year directly or indirectly
47 from the rendering of management, distribution or administration services to a regulated
48 investment company, including net income received directly or indirectly from trustees, sponsors
49 and participants of employee benefit plans which have accounts in a regulated investment
50 company.

51 "Mutual fund service corporation", any corporation doing business in the commonwealth which
52 derives more than fifty percent of its gross income from the provision directly or indirectly of
53 management, distribution or administration services to or on behalf of a regulated investment

54 company and from trustees, sponsors and participants of employee benefit plans which have
55 accounts in a regulated investment company.

56 "Regulated investment company", the meaning as set forth in section 851 of the Internal Revenue
57 Code as amended and in effect for the taxable year.